

App'n. No. 10/634,219
Amdt. dated: January 19, 2005
Reply to Office Action dated October 20, 2004

Remarks/Arguments

These remarks are in response to the Office Action dated October 20, 2004. This reply is timely filed.

At the time of the Office Action, claims 1-22 were pending in the application. Claims 1-10, 12-16 and 18-22 were rejected under 35 U.S.C. §102(e). The rejections are set out in more detail below.

I. Missing Examiner Signatures on Supplemental IDS

Prior to addressing the Examiner's rejections on the art, Applicants note that the citations identified in the Supplemental Information Disclosure Statement filed September 24, 2004, does not appear to have been signed by the Examiner. Applicants respectfully request that the Examiner initial the references in said Supplemental Information Disclosure Statement and consider the references, if the Examiner has not already done so.

II. Claim Rejections on Art

Claims 1-10, 12-16 and 18-22 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Application No. US 2004/0178966 to Rawnick, et al. However, Applicants believe that this rejection is improper and not in conformance with the provisions of 35 U.S.C. §102(e). Specifically, the relevant portion of 35 U.S.C. §102 states as follows:

A person shall be entitled to a patent unless-

...
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent (2) ...

35 U.S.C. §102

In this context, the MPEP explains that "by another" means the inventive entity is someone other than the applicants. MPEP §2136.04, *citing, In re Land*, 368 F.2d 866, 151 USPQ 621 (CCPA 1966). In other words, a reference is properly used to reject patent claims under 35 U.S.C. §102(e)(1) only where the reference lists a different inventive entity as compared to the application under examination. The inventive entity is different if not all of the inventors are the same.

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In the present case, the inventors are the same in the cited reference and the pending application. Specifically, James J. Rawnick and Stephen B. Brown are listed as the inventors for the presently pending application. The same inventors, and no others, are listed on the referenced publication US 2004/0178966 to Rawnick, et al.

In view of the foregoing, the Examiner's rejection under 35 U.S.C. §102(e) is believed to be improper. Accordingly, Applicants respectfully request that the rejection be withdrawn.

III. Allowable Subject Matter

Applicants notes with appreciation that Examiner has objected to claims 11 and 17 but has indicate that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants respectfully decline to amend claims 11 and 17 at this time as it is believed that the base claims would be allowable upon withdrawal of the improper rejection set forth above.

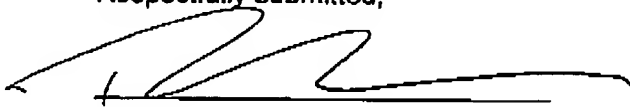
IV. Conclusion

Applicant has made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. Nevertheless, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicant respectfully requests reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

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